



General Assembly

Substitute Bill No. 5218

February Session, 2014



**AN ACT CONCERNING THE ADOPTION OF THE UNIFORM
PARTITION OF HEIRS' PROPERTY ACT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2014*) Sections 1 to 13,
2 inclusive, of this act may be cited as the Uniform Partition of Heirs'
3 Property Act.

4 Sec. 2. (NEW) (*Effective October 1, 2014*) As used in this section and
5 sections 3 to 13, inclusive, of this act:

6 (1) "Ascendant" means an individual who precedes another
7 individual in lineage, in the direct line of ascent from the other
8 individual;

9 (2) "Collateral" means an individual who is related to another
10 individual under the law of intestate succession of this state but who is
11 not the other individual's ascendant or descendant;

12 (3) "Descendant" means an individual who follows another
13 individual in lineage, in the direct line of descent from the other
14 individual;

15 (4) "Determination of value" means a court order (A) determining
16 the fair market value of heirs' property under section 6 or 10 of this act,

17 or (B) adopting the valuation of the property agreed to by all
18 cotenants;

19 (5) "Heirs' property" means real property held in tenancy in
20 common which satisfies all of the following requirements as of the date
21 of filing a partition action:

22 (A) There is no agreement in a record binding all the cotenants
23 which governs the partition of the property;

24 (B) One or more of the cotenants acquired title from a relative,
25 whether living or deceased; and

26 (C) Any of the following apply:

27 (i) Twenty per cent or more of the interests are held by cotenants
28 who are relatives;

29 (ii) Twenty per cent or more of the interests are held by an
30 individual who acquired title from a relative, whether living or
31 deceased; or

32 (iii) Twenty per cent or more of the cotenants are relatives;

33 (6) "Partition by sale" means a court-ordered sale of the entire heirs'
34 property, whether by auction, sealed bids, or open-market sale
35 conducted under section 10 of this act;

36 (7) "Partition in kind" means the division of heirs' property into
37 physically distinct and separately titled parcels;

38 (8) "Record" means information that is inscribed on a tangible
39 medium or that is stored in an electronic or other medium and is
40 retrievable in perceivable form; and

41 (9) "Relative" means an ascendant, descendant or collateral or an
42 individual otherwise related to another individual by blood, marriage,
43 adoption or law of this state other than the provisions of sections 1 to

44 13, inclusive, of this act.

45 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) The provisions of sections
46 1 to 13, inclusive, of this act apply to partition actions filed on or after
47 October 1, 2014.

48 (b) In an action to partition real property under either section 45a-
49 326 or 52-495 of the general statutes, as applicable, the court shall
50 determine whether the property is heirs' property. If the court
51 determines that the property is heirs' property, the property shall be
52 partitioned under sections 1 to 13, inclusive, of this act unless all of the
53 cotenants otherwise agree in a record.

54 (c) The provisions of sections 1 to 13, inclusive, of this act
55 supplement chapter 919 of the general statutes, and, if an action is
56 governed by sections 1 to 13, inclusive, of this act, replace provisions of
57 chapter 919 of the general statutes that are inconsistent with the
58 provisions of sections 1 to 13, inclusive, of this act.

59 Sec. 4. (NEW) (*Effective October 1, 2014*) (a) The provisions of sections
60 1 to 13, inclusive, of this act do not limit or affect the method by which
61 service of a complaint in a partition action may be made.

62 (b) If the plaintiff in a partition action seeks an order of notice by
63 publication and the court determines that the property may be heirs'
64 property, the plaintiff, not later than ten days after the date of the
65 court's determination, shall post and maintain while the action is
66 pending a conspicuous sign on the property that is the subject of the
67 action. The sign shall state that the action has commenced and identify
68 the name and address of the court and the common designation by
69 which the property is known. The court may require the plaintiff to
70 publish on the sign the name of the plaintiff and the known
71 defendants.

72 Sec. 5. (NEW) (*Effective October 1, 2014*) If the court appoints a
73 committee pursuant to section 52-495 of the general statutes, each
74 committee member shall be disinterested and impartial and not a party

75 to or a participant in the action.

76 Sec. 6. (NEW) (*Effective October 1, 2014*) (a) Except as provided in
77 subsections (b) and (c) of this section, if the court determines that the
78 property that is the subject of a partition action is heirs' property, the
79 court shall determine the fair market value of the property by ordering
80 an appraisal pursuant to subsection (d) of this section.

81 (b) If all cotenants have agreed to the value of the property or to
82 another method of valuation, the court shall adopt that value or the
83 value produced by the agreed method of valuation.

84 (c) If the court determines that the evidentiary value of an appraisal
85 is outweighed by the cost of the appraisal, the court, after an
86 evidentiary hearing, shall determine the fair market value of the
87 property and send notice to the parties of the value.

88 (d) If the court orders an appraisal, the court shall appoint a
89 disinterested real estate appraiser licensed in this state to determine
90 the fair market value of the property assuming sole ownership of the
91 fee simple estate. On completion of the appraisal, the appraiser shall
92 file a sworn or verified appraisal with the court.

93 (e) If an appraisal is conducted pursuant to subsection (d) of this
94 section, not later than ten days after the date on which the appraisal is
95 filed with the court, the court shall send notice to each party with a
96 known address, stating:

97 (1) The appraised fair market value of the property;

98 (2) That the appraisal is available at the clerk's office; and

99 (3) That a party may file with the court an objection to the appraisal
100 not later than thirty days after the date on which the notice is sent,
101 stating the grounds for the objection.

102 (f) If an appraisal is filed with the court pursuant to subsection (d) of

103 this section, the court shall conduct a hearing to determine the fair
104 market value of the property not earlier than thirty days after the date
105 on which a copy of the notice of the appraisal is sent to each party
106 under subsection (e) of this section, whether or not an objection to the
107 appraisal is filed under subdivision (3) of subsection (e) of this section.
108 In addition to the court-ordered appraisal, the court may consider any
109 other evidence of value offered by a party.

110 (g) After a hearing under subsection (f) of this section, but before
111 considering the merits of the partition action, the court shall determine
112 the fair market value of the property and send notice to the parties of
113 the value.

114 Sec. 7. (NEW) (*Effective October 1, 2014*) (a) If any cotenant requested
115 partition by sale, after the determination of value under section 6 of
116 this act, the court shall send notice to the parties that any cotenant
117 except a cotenant that requested partition by sale may buy all the
118 interests of the cotenants that requested partition by sale.

119 (b) Not later than forty-five days after the date on which the notice
120 is sent under subsection (a) of this section, any cotenant except a
121 cotenant that requested partition by sale may give notice to the court
122 that it elects to buy all the interests of the cotenants that requested
123 partition by sale.

124 (c) The purchase price for each of the interests of a cotenant that
125 requested partition by sale is the value of the entire parcel determined
126 under section 6 of this act, multiplied by the cotenant's fractional
127 ownership of the entire parcel.

128 (d) After expiration of the forty-five-day period prescribed in
129 subsection (b) of this section, the following rules apply:

130 (1) If only one cotenant elects to buy all the interests of the cotenants
131 that requested partition by sale, the court shall notify all the parties of
132 that fact.

133 (2) If more than one cotenant elects to buy all the interests of the
134 cotenants that requested partition by sale, the court shall (A) allocate
135 the right to buy those interests among the electing cotenants based on
136 each electing cotenant's existing fractional ownership of the entire
137 parcel divided by the total existing fractional ownership of all
138 cotenants electing to buy; and (B) send notice to all the parties of that
139 fact and of the price to be paid by each electing cotenant.

140 (3) If no cotenant elects to buy all the interests of the cotenants that
141 requested partition by sale, the court shall send notice to all the parties
142 of that fact and resolve the partition action under subsections (a) and
143 (b) of section 8 of this act.

144 (e) If the court sends notice to the parties under subdivision (1) or
145 (2) of subsection (d) of this section, the court shall set a date, not earlier
146 than sixty days after the date on which the notice was sent, by which
147 electing cotenants must pay their apportioned price to the court. After
148 the court sets such date, the following rules apply:

149 (1) If all electing cotenants timely pay their apportioned price to the
150 court, the court shall issue an order reallocating all the interests of the
151 cotenants and disburse the amounts held by the court to the persons
152 entitled to such amounts.

153 (2) If no electing cotenant timely pays its apportioned price, the
154 court shall resolve the partition action under subsections (a) and (b) of
155 section 8 of this act, as if the interests of the cotenants that requested
156 partition by sale were not purchased.

157 (3) If one or more but not all of the electing cotenants fail to pay
158 their apportioned price on time, the court, on motion, shall give notice
159 to the electing cotenants that paid their apportioned price of the
160 interest remaining and the price for all that interest.

161 (f) Not later than twenty days after the date on which the court
162 gives notice pursuant to subdivision (3) of subsection (e) of this
163 section, any cotenant that paid may elect to purchase all of the

164 remaining interest by paying the entire price to the court. After the
165 twenty-day period, the following rules apply:

166 (1) If only one cotenant pays the entire price for the remaining
167 interest, the court shall issue an order reallocating the remaining
168 interest to that cotenant. The court shall promptly issue an order
169 reallocating the interests of all of the cotenants and disburse the
170 amounts held by it to the persons entitled to such amounts.

171 (2) If no cotenant pays the entire price for the remaining interest, the
172 court shall resolve the partition action under subsections (a) and (b) of
173 section 8 of this act, as if the interests of the cotenants that requested
174 partition by sale were not purchased.

175 (3) If more than one cotenant pays the entire price for the remaining
176 interest, the court shall reapportion the remaining interest among
177 those paying cotenants, based on each paying cotenant's original
178 fractional ownership of the entire parcel divided by the total original
179 fractional ownership of all cotenants that paid the entire price for the
180 remaining interest. The court shall promptly issue an order
181 reallocating all of the cotenants' interests, disburse the amounts held
182 by it to the persons entitled to such amounts, and promptly refund any
183 excess payment held by the court.

184 (g) Not later than forty-five days after the date on which the court
185 sends notice to the parties pursuant to subsection (a) of this section,
186 any cotenant entitled to buy an interest under this section may request
187 that the court authorize the sale as part of the pending action of the
188 interests of cotenants named as defendants and served with the
189 complaint but that did not appear in the action.

190 (h) If the court receives a timely request under subsection (g) of this
191 section, the court, after hearing, may deny the request or authorize the
192 requested additional sale on terms that the court determines are fair
193 and reasonable, subject to the following limitations:

194 (1) A sale authorized under this subsection may occur only after the

195 purchase prices for all interests subject to sale under subsections (a) to
196 (f), inclusive, of this section have been paid to the court and those
197 interests have been reallocated among the cotenants as provided in
198 subsections (a) to (f), inclusive, of this section; and

199 (2) The purchase price for the interest of a nonappearing cotenant is
200 based on the court's determination of value under section 6 of this act.

201 Sec. 8. (NEW) (*Effective October 1, 2014*) (a) If all the interests of all
202 cotenants that requested partition by sale are not purchased by other
203 cotenants pursuant to section 7 of this act, or if after conclusion of the
204 buyout under section 7 of this act, a cotenant remains that has
205 requested partition in kind, the court shall order partition in kind
206 unless the court, after consideration of the factors listed in section 9 of
207 this act, finds that partition in kind will result in manifest prejudice to
208 the cotenants as a group. In considering whether to order partition in
209 kind, the court shall approve a request by two or more parties to have
210 their individual interests aggregated.

211 (b) If the court does not order partition in kind under subsection (a)
212 of this section, the court shall order partition by sale pursuant to
213 section 10 of this act or, if no cotenant requested partition by sale, the
214 court shall dismiss the action.

215 (c) If the court orders partition in kind pursuant to subsection (a) of
216 this section, the court may require that one or more cotenants pay one
217 or more other cotenants amounts so that the payments, taken together
218 with the value of the in-kind distributions to the cotenants, will make
219 the partition in kind just and proportionate in value to the fractional
220 interests held.

221 (d) If the court orders partition in kind, the court shall allocate to the
222 cotenants who are unknown, cannot be located, or the subject of a
223 default judgment, if their interests were not bought out pursuant to
224 section 7 of this act, a part of the property representing the combined
225 interests of such cotenants as determined by the court and this part of

226 the property shall remain undivided.

227 Sec. 9. (NEW) (*Effective October 1, 2014*) (a) In determining under
228 subsection (a) of section 8 of this act whether partition in kind would
229 result in manifest prejudice to the cotenants as a group, the court shall
230 consider the following:

231 (1) Whether the heirs' property practicably can be divided among
232 the cotenants;

233 (2) Whether partition in kind would apportion the property in such
234 a way that the aggregate fair market value of the parcels resulting from
235 the division would be materially less than the value of the property if
236 it were sold as a whole, taking into account the condition under which
237 a court-ordered sale likely would occur;

238 (3) Evidence of the collective duration of ownership or possession of
239 the property by a cotenant and one or more predecessors in title or
240 predecessors in possession to the cotenant who are or were relatives of
241 the cotenant or each other;

242 (4) A cotenant's sentimental attachment to the property, including
243 any attachment arising because the property has ancestral or other
244 unique or special value to the cotenant;

245 (5) The lawful use being made of the property by a cotenant and the
246 degree to which the cotenant would be harmed if the cotenant could
247 not continue the same use of the property;

248 (6) The degree to which the cotenants have contributed their pro
249 rata share of the property taxes, insurance, and other expenses
250 associated with maintaining ownership of the property or have
251 contributed to the physical improvement, maintenance, or upkeep of
252 the property; and

253 (7) Any other relevant factor.

254 (b) The court may not consider any one factor in subsection (a) of
255 this section to be dispositive without weighing the totality of all
256 relevant factors and circumstances.

257 Sec. 10. (NEW) (*Effective October 1, 2014*) (a) If the court orders a sale
258 of heirs' property, the sale shall be an open-market sale unless the
259 court finds that a sale by sealed bids or an auction would be more
260 economically advantageous and in the best interest of the cotenants as
261 a group.

262 (b) If the court orders an open-market sale and the parties, not later
263 than ten days after the date of entry of the order, agree on a real estate
264 broker licensed in this state to offer the property for sale, the court
265 shall appoint the real estate broker and establish a reasonable
266 commission. If the parties do not agree on a real estate broker, the
267 court shall appoint a disinterested real estate broker licensed in this
268 state to offer the property for sale and shall establish a reasonable
269 commission. The real estate broker shall offer the property for sale in a
270 commercially reasonable manner at a price no lower than the
271 determination of value and on the terms and conditions established by
272 the court.

273 (c) If the real estate broker appointed under subsection (b) of this
274 section obtains, within a reasonable time, an offer to purchase the
275 property for at least the determination of value: (1) The real estate
276 broker shall comply with the reporting requirements in section 11 of
277 this act; and (2) the sale may be completed in accordance with
278 requirements of state law other than the requirements prescribed in
279 sections 1 to 13, inclusive, of this act.

280 (d) If the real estate broker appointed under subsection (b) of this
281 section does not obtain, within a reasonable time, an offer to purchase
282 the property for at least the determination of value, the court, after
283 hearing, may:

284 (1) Approve the highest outstanding offer, if any;

285 (2) Redetermine the value of the property and order that the
286 property continue to be offered for an additional time; or

287 (3) Order that the property be sold by sealed bids or at auction.

288 (e) If the court orders a sale by sealed bids or at auction, the court
289 shall set terms and conditions of the sale. If the court orders an auction,
290 the auction shall be conducted in accordance with the provisions of
291 chapter 919 of the general statutes.

292 (f) If a purchaser is entitled to a share of the proceeds of the sale, the
293 purchaser is entitled to a credit against the price in an amount equal to
294 the purchaser's share of the proceeds.

295 Sec. 11. (NEW) (*Effective October 1, 2014*) (a) A real estate broker
296 appointed under subsection (b) of section 10 of this act to offer heirs'
297 property for open-market sale shall file a report with the court not later
298 than seven days after the date of receiving an offer to purchase the
299 property for at least the value determined under section 6 or 10 of this
300 act.

301 (b) The report required by subsection (a) of this section shall contain
302 the following information:

303 (1) A description of the property to be sold to each buyer;

304 (2) The name of each buyer;

305 (3) The proposed purchase price;

306 (4) The terms and conditions of the proposed sale, including the
307 terms of any owner financing;

308 (5) The amounts to be paid to lienholders;

309 (6) A statement of contractual or other arrangements or conditions
310 of the broker's commission; and

311 (7) Other material facts relevant to the sale.

312 Sec. 12. (NEW) (*Effective October 1, 2014*) In applying and construing
 313 the provisions of sections 1 to 13, inclusive, of this act, consideration
 314 shall be given to the need to promote uniformity of the law with
 315 respect to its subject matter among states that enact such uniform
 316 provisions.

317 Sec. 13. (NEW) (*Effective October 1, 2014*) The provisions of sections 1
 318 to 12, inclusive, of this act, modify, limit and supersede the Electronic
 319 Signatures in Global and National Commerce Act, 15 USC Section 7001
 320 et seq., but do not modify, limit or supersede Section 101(c) of said act,
 321 15 USC Section 7001(c), or authorize electronic delivery of any of the
 322 notices described in Section 103(b) of said act, 15 USC Section 7003(b).

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section
Sec. 2	<i>October 1, 2014</i>	New section
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>October 1, 2014</i>	New section
Sec. 5	<i>October 1, 2014</i>	New section
Sec. 6	<i>October 1, 2014</i>	New section
Sec. 7	<i>October 1, 2014</i>	New section
Sec. 8	<i>October 1, 2014</i>	New section
Sec. 9	<i>October 1, 2014</i>	New section
Sec. 10	<i>October 1, 2014</i>	New section
Sec. 11	<i>October 1, 2014</i>	New section
Sec. 12	<i>October 1, 2014</i>	New section
Sec. 13	<i>October 1, 2014</i>	New section

Statement of Legislative Commissioners:

In section 12, "said act" was changed to "such uniform provisions" for accuracy and consistency with other provisions of the general statutes.

JUD *Joint Favorable Subst.*